

Food, drugs, medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

July 11, 2003

Dear Xxxxx:

This letter is in response to your letter dated February 26, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

On behalf of AAA, certain rulings set forth below are requested on the sales tax matter on the proposed transactions described in the request.

AAA, do business as a candy and confectionary retailer, having two locations in the State. Therefore, taxable and non taxable transactions are taking place.

We request that your Department determine which of the transactions described below are taxable or not, which tax rate should be applicable, and under which regulations or publications:

- Sale of bulk candy, such as: gummy bear, jelly belly beans, m&m plain, chocolate peanut cluster, chocolate cookie dough, gumballs assorted, etc.
- Sale of count items, such as: candy bars, interactive candy items, baby bottle pops, Wrigley's doublemint gum, necco wafers, jelly belly gift box, etc.
- Sale of gift items, such as: jelly belly jar, jelly belly machine, jelly belly tin, candy plastic dispensers, chocolate caramel bunny, plush bunny on cube, praline hearts bouquet, rabbit/carrot planter, promo-daisy cups, etc
- Sale of soda in plastic bottle.

Please do not hesitate to contact NAME, if you should have any questions,

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Food, drugs, medicines and medical

appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310.

As you can see, “[a] food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice.” Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items only if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3).

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a).

Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final act of preparation by the retailer. It is presumed that retailers who sell food prepared for immediate consumption in individual single-sized servings will sell all such items for consumption without substantive delay. Thus, for example, a retailer whose gross sales receipts are derived primarily from sales of individual fudge pieces, soft pretzels, doughnuts, or cookies prepared in the morning will be subject to the high rate of tax regardless of when during a business day such items are sold and actually consumed. The high rate is applicable to all his sales in this instance, including items sold in bulk. See 86 Ill. Adm. Code 130.310(b)(6).

A retailer should collect the low rate of tax if more than 50% of his candy sales are candy not prepared by the retailer for immediate consumption. (The high rate is still imposed, however, on any items the retailer prepares for immediate consumption or for soft drinks or alcoholic beverages.) If, however, more than 50% of his sales are sales of candy the retailer has prepared for immediate consumption, then the retailer should be collecting the high rate of tax on all sales. We are unable to determine from your letter how much of your candy sales are prepared by the retailer and sold for immediate consumption; therefore, we cannot determine the exact rate of tax. Please note that the State and local general merchandise rate of tax for Chicago (Cook County) is 8.75%, for Chicago (DuPage County) is 7.50%, and for Skokie is 8.50%. (The Department’s rate reference manual can be viewed on the Department’s Web site. It is updated each January and July.)

The sale of soft drinks is always subject to the high rate of tax. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or

sealed bottle, can, carton, or container, regardless of size. Soft drinks do not include coffee, tea, noncarbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310(b)(5).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.